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8	BEFORE THE	
9	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA	,
	In the Matter of the Accusation Against: Case No. 2011-533	
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12	DANIEL MARK ZIMNY 1648 Midford Lane  ACCUSATION	
13	Lincoln, CA 95648	
14	Registered Nurse License No. 677832	
15	Respondent.	
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17.	Complainant alleges:	
18	PARTIES	
19	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in he	r
20	official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),	
21	Department of Consumer Affairs.	
22	Registered Nurse License	
23	2. On or about April 17, 2006, the Board issued Registered Nurse License Number	
24	677832 to Daniel Mark Zimny ("Respondent"). The license was in full force and effect at all	
25	times relevant to the charges brought herein and will expire on November 30, 2011, unless	
26	renewed.	
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### STATUTORY PROVISIONS

- 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
  - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
- 6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

## COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

### (Criminal Convictions)

- 8. Respondent is subject to discipline pursuant to Code section 2761, subdivision (f), in that Respondent has been convicted of the following crimes that are substantially related to the qualifications, functions, and duties of a registered nurse:
- a. On June 12, 2007, in the Superior Court, County of Sacramento, California, in the matter titled *People v. Daniel M. Zimny*, Case No. 07T02535, Respondent was convicted by the court following his plea of nolo contendere to a violation of Vehicle Code section 23103.5, (reckless driving, alcohol related), a misdemeanor. Respondent was originally charged with a violation of Vehicle Code sections 23152, subdivision (a), and 23152, subdivision (b). The circumstances of the crime are that on or about April 25, 2007, following a routine traffic stop, Respondent was arrested for driving under the influence.
- b. On July 9, 2009, in the Justice Court of Sparks Township, County of Washoe, State of Nevada, in the matter entitled *People v. Daniel Mark Zimny*, Case No. SJC 09-441, Respondent was convicted by the court following his plea of guilty to a violation of NRS 484.379 and NRS 484.3792 (driving under the influence), a misdemeanor. The circumstances of the crime are that following a single vehicle accident caused by Respondent, he was arrested for being under the influence of alcohol. Respondent's blood alcohol measured .218%.

#### SECOND CAUSE FOR DISCIPLINE

# (Criminal Convictions Involving the Consumption of Alcohol)

9. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c), in that Respondent has been convicted of crimes involving the consumption of alcohol, as more particularly set forth in paragraph 8, above.

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## THIRD CAUSE FOR DISCIPLINE 1 (Use Alcohol to an Extent or in a Manner Dangerous or Injurious) 2 10. Respondent is subject to discipline pursuant to Code section 2761, subdivision (a), on 3 the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in that 4 on April 25, 2007, and February 26, 2009, Respondent consumed alcohol to an extent or in a 5 manner dangerous or injurious to himself or others, as more particularly set forth in paragraph 8, 6 7 above. **PRAYER** 8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 9 and that following the hearing, the Board of Registered Nursing issue a decision: 10 Revoking or suspending Registered Nurse License Number 677832 issued to Daniel 11 12 Mark Zimny; 2. Ordering Daniel Mark Zimny to pay the Board of Registered Nursing the reasonable 13 costs of the investigation and enforcement of this case, pursuant to Business and Professions 14 Code section 125.3; and, 15 Taking such other and further action as deemed necessary and proper. 16 17 18 19 DATED: 20 **Executive Officer** Board of Registered Nursing 21 Department of Consumer Affairs State of California 22 Complainant 23 SA2010102034 / 10641718 24 25 26 27

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